

Legislative Regime on child labour in India: A critical analysis

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Abstract

You cannot teach a child any more than you can grow a plant. All you can do is on the negative side you can help. It is a manifestation from within, it develops its own nature you can take away obstruction.

Swami Vivekanand

Children like a mirror, which reflect the future image of a nation. Children are not only the future of any nation but also strength in reserve. If they are active and healthy, educated and informed, trained and disciplined, the future of our nation is well insured, and if they are wanting in the above aspects the future of a nation is forwarded to disaster.

Child Labour is a common phenomenon in almost all countries of the world. What is still worse is 55 percent do not get the basic needs of life, and 28 percent are without home and even they don't have shelter from the sun, rain and cold. They suffer from a big hidden hunger, as already refer in the U.N. Jargon "Invisible Malnutrition". Now a day's everybody talk about the exploitation of child labour and required special and immediate action to save the future of new generation of children from exploitation. Children's programme should find a prominent place in our National Policy for the development of human resources so that our children grow up to become a strong and robust citizen, they should be mentally healthy, physically fit, and also be morally sound. According to Human Rights everyone should get their basic necessity of life apart from right to life, liberty, security and dignity, but the existing economic disorder where prosperity of few is dependent on the poverty of many people which is the negation of the concept of universal respect for human rights. Exploitation of child labour in both the spheres- organized sector and unorganized sector is a modern sub-realistic problem which needs global movement for immediate attention and fullest remedial action to set right the wrong that are being never ending. However, it has become a major perpetual social evil of the world including of our country and no suitable and appropriate remedy has been tried out so far. No doubt that much has been done to prohibited child labour legally but in reality it is not to see that an occupation without child labour.

The present paper deals with the general discussion of the problem of Child Labour in India and the Attitude that the law and the legal regime have to evolve to deal with it which includes conclusions and suggestions drawn on the basis of the critical analysis of the statutory provisions form an integral part of this paper.

Keywords: Legislative, child labour, India, Analysis

1. Introduction

To shape the world of tomorrow, the progress and the development of each child must be the concern of the today. Society perpetuates through its children and the future and stability of it depends on the quality of them. So welfare of the child is a must for the development of a nation.

Child welfare embraces the services and institutions concerned with the physical, social and psychological well-being of children and it is particularly concerned with children and it is particularly concerned with the children lacking normal parents care and supervision.¹ In short this expression emphasizes the need of continuously taking into an account all aspects of the child's well being and dealing with the whole child not some isolated phase of his development.²

It is therefore a duty of the society to protect these blooming flowers from the damaging effects of excessive exposure to heat, cold and rain and not to pluck them to satisfy their momentary whims.³ The growth of the child into a mature and happy person with fully developed personality largely depends

upon the support. If a child does not get proper education, diet and other facilities, his very development into a self-sustaining human being is dwarfed. The child because of his physical and mental immaturity needs special safeguards. It, becomes, therefore the duty of the State to protect children's right by legislative, executive and the judicial means. The needs and requirements of the child, the primordial grundnorm of this universe, the most innocent and helpless human being incapable of enforcing his legal rights, may, but to speak of demanding new rights obligate the state to secure him justice.⁴

2. Definition, Causes and Evils of Child Labour

(a) Definition of "Child"

The conceptualization of the child status lead to ambiguity, as it is guided by individual consideration. Therefore, a standard has to be accepted to determine an age-range for defining child. Article 24 of the Constitution of India says "no child below the age of fourteen years shall be employed in any factory or mine or engaged in any other hazardous employment. Article 21(a) states that the state shall provide free and compulsory

¹. Encyclopaedia Britannica 523.

². Encyclopaedia of the Social Sciences 3 380(1951).

³. R. Revathi, "Child Labour: Challenge to the Nation" 3 SCJ17(1992).

⁴. Kamal Jeet Singh & Surender Singh, et.al. (eds.), "A Peep into Child Welfare Jurisprudence in India" 9&10 Kanpur law Journal 50 (1994&1995).

education to all children below the age of six to fourteen years in such manner as the state may determine. Article 45 states that the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years.⁵ Article 51(k) lays down a duty that the parents or guardians should provide opportunities for education to his child/ward between the age of six and fourteen years. According to the United Nation Convention of the Rights of the Child, 1989 define child mean any person below the age of eighteenth years.⁶ As per the Indian Penal Code, 1860 a child is a person who has not yet attained the ability to understand what is crime or not and its consequences might be. Then it means that if a child is under seven years of age and he commits a crime, then he will not be responsible for his acts as per IPC he is a *doli incapax* (incapable of understanding the nature, quality and consequences of the Act)⁷. It can be raised up to twelve years.⁸ According to Section 4(a) of Hindu Minority and Guardianship Act, 1956 defines a 'minor' as a person who has not completed the age of eighteen years. According to Children Marriage Restraint Act, 1929 the age factor for determining child for the marriage is twenty one years in case of boys and eighteen years in case of girls. Juvenile Justice (Care and Protection of Children) Amendment Act, 2015, replaced the existing Indian juvenile delinquency law (Juvenile Justice (Care and Protection of Children) Act, 2000) so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults. As per Apprentice Act, 1961, a person is qualified to be engaged as an apprentice only if he is not less than fourteen years of age and satisfies such standards of education and physical fitness as may be prescribed.⁹ According to Indian Majority Act, 1875 the age of majority has been fixed at eighteen years for right to vote.¹⁰ Under the Vaccination Act, 1880 children have been defined as person "who have not attained the age of fourteen years in case of boys and eighteen years in case of girls. According to Reformatory School Act, 1887 "youth offender" means any boy who has been convicted of any offence punishable with imprisonment for life or death and whoa the time of such conviction, was under the age of fifteen years.

(b) Concept of Child Labour

The concept of child labour has been used in relation to an economic practice and to its attendant social evil. As an economic practice, child labour means gainful occupations and material contribution to the income of the family. As a social evil, it denotes the possible exploitation in the hands of the employer. This also includes the nature of the job of the child, the dangers to which he is exposed and the obstacles in the possible opportunities for the growth and the development of his personality. This dimension of the child labour, not only "deprives the children of getting education but also gradually depressed their productive ability and thereby paves away for a depressed and degraded life".¹¹

⁵. Eighty Six (Constitutional Amendment) Act, 2002.

⁶. Art 2.

⁷. Section 82.

⁸.Section 83.

⁹. Section 3.

¹⁰. Section 2.

¹¹. K.D Gangrade, 2 Social Legislation in India 107 (Concept Publishing Company, New Delhi, 1th edn, 1978).

(c) Causes of the Child Labour

The plight of child labour is very deplorable. It has its roots in the social conventions, traditions and morals of society and the children have been exploited due to these customs and traditions. It is looked upon as a social evil and the social scientists are now giving much importance to this study of problems and development of children. The problem of child labour, however, in India is not of any single isolated factor. It is a multidimensional problem that involves various reasons contributing to this problem in a variety of ways. Some of the foremost factors responsible for prevalence and perpetuation for child labour are (i) continued poverty (ii) inadequate income of parents (iii) unemployment (iv) self-interest of employers (v) cheap labourers (vi) indebtedness (vii) suitability of specific jobs. Apart from economic reasons, the fast erosion of social, cultural and moral values scenario also change with the advent of industrialization and urbanization and child labour became inescapable fallout of increasing urbanization along with exploding population. Over and above this another important reason is the employer anxiety to lure child labour as they may do the same amount of work as that off an adult but cost less in terms of wages.

(d) Evils of Child Labour

Child labor is not a recent phenomenon. Throughout human history, children have been made to work under hazardous and unhealthy conditions. In other words, child exploitation has remained an integral part of our culture and despite the advances made by us in last few centuries; we haven't been able to eradicate this menace. Children are made to work in factories, mining, and agriculture, on streets and as domestic helps. Child labour is an attack on basic rights of the children. Leave alone lack of educational opportunities to them, most of these children are malnourished and treated like animals. Child labour practices causes damage to a child's physical and mental health apart from depriving him of his basic rights to education, development, and freedom. Unfortunately, the number of underage children working in unfavorable working conditions has kept on increasing.

These children work in unsafe environments where there is a constant danger of fatal accidents. Children employed as laborers spend most of their waking hours working. They are condemned to a life of poverty, illiteracy, and prolonged misery with no end in sight. They are required to perform grueling and physically demanding tasks and in return receive only meager wages. Poor working conditions cause severe health problems to such children. A child labor not just suffers physical and mental torture but also becomes mentally and emotionally mature too fast which is never a good sign.

As children are sensitive to influences of toxics, chemicals, noise, pollution, heat and accidents, as a result of which many children develop lifelong health complications in worst cases, even lose their lives. A large number of child laborers are employed in mining, manufacturing, transportation and construction sectors where chances of fatal injuries are quite high. Because of the environmental influence, underage children suffer from permanent psychological scars. They do not possess confidence or self-esteem. It is hard to imagine, how we as a country are going to prosper when a significant population of the nation suffers from such huge problems.

3. Constitutional Provisions and Child Labour

(a) Child Labour Welfare under Fundamental Rights

The chapter on fundamental rights in Indian Constitution guarantees some fundamental rights only the citizens of India while the others are guaranteed to any persons (i.e., for both citizens and non-citizens), with in which the fundamental rights of the children are also implicitly included. The children have rights to enjoy at all the fundamental rights which are guaranteed to the citizens of India under Articles 15, 16, 19 and 29 of the Constitution because the children in India are also citizens of India. The fundamental rights which are available only to the citizens are

- 1) The right not to be discriminated against on the ground of religion, race, caste, sex or place of birth (Article 15).
- 2) The right to equality of opportunity in the matter of public employment (Article 16).
- 3) The right to six freedoms enumerated in Article 19, i.e., freedom of speech and expression, assembly, association, movement, residence and profession.
- 4) Cultural and educational rights (Article 29 & 30).

There are also some fundamental rights expressly provided for children and some other fundamental rights which are also applicable for children.

Articles 15 give a special treatment to the children and treat them as a class due to which state can make law relating to the benefit of the children. Article 15 (3) empowers the state to make special provision for women and children. Though, no ground is mentioned, preferential treatment is permitted on consideration of inherent weakness of children. The objective of this article 15(3) is to avoid any controversy and demonstrate the concern of the framers of the constitution that the state shall strive to promote the welfare of the children. Frankly admitting our solitude, for children and repulsion for the exploitation of children of tender age impelled our founding fathers to add such as specific positive provision enabling the state to make law for the welfare of children and given them preferential treatment over other persons in the society.¹²

Article 21 is also providing for the protection of life and personal liberty of the people including children. "Right to Life" in this context had been held to be not a mere animal existence¹³ but it is to be with human dignity and values.¹⁴

Article 21 A talks about the right of education and it is duty of the state to provide free and compulsory education to all children from the age of six to fourteen years in such manner as the state may, by law, determine.¹⁵

Article 23 prohibits traffic in human beings, begar and other similar forms of forced labour. The second part of article 23 declares that any contravention of this provision shall be an offence punishable in accordance with law. Although, this article does not specify specifically speak of children, yet it applies to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited even by the parents who allow their exploitation because of their poverty. And in the absence of parents their exploitation by close relatives is still deeper. They are deprived of education and

made to do all sort of working injurious to their health and personality. In rural areas children are pledged by destitute parents to the landlords as full time servants or part-time workers to look after both domestic and agricultural operations. In urban areas, the exploitation of children in myriad form exists, such helpers to artisans and skilled workers and also as domestic servants. Million of the children are exploited in violation of this fundamental right and no adequate legislative and administrative measures have been taken by the state.¹⁶

Article 24 prohibits the employment of children below the age of 14 years in factories mines or engaged in any other hazardous employment. But in the context of the prevailing poverty in the country it would be extremely difficult to implement the above provision. Employment of children below a particular age is also prohibited to children taking into consideration their physical structure. This article does not create absolute bar to the employment of children below the age of 14 years. More ever, it does not prohibits their employment altogether. The employment is prohibited only in factory or mine or in any other hazardous occupation. However, this provision is to be understood in the light or realities and economic need of parents and children in our society. As Article 24 prohibits the employment of children below the age of 14 years, it is submitted that even with respect to children above the age of 14 years; all agreements either express or implied are voidable and are of doubtful validity in case of exploitation. Further Article 24 is plainly and indubitably enforceable against every one and by reason of its impulsive mandate no one can employ a child below the age of 14 years in hazardous employment. The provision raises a question as to what the hazardous employment. Hazardous employment of children below 14 years is constitutional prohibition which even if not followed up by the appropriate legislations must operate proprio vigore.¹⁷ It is therefore, necessary to identify the employment which may be called hazard's employment. Thus Article 24 is an additional precautionary measures securing distributive justice to children.¹⁸

(b) Child Labour Welfare Philosophy under Directive Principle of State Policy

The underlying principles of the Directive Principles of State Policy are "to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution". Through such a social revolution the constitution also seeks to achieve the objectives of the child welfare. To achieve the goals of child welfare, the constitution has some provision in Part IV. The Directive Principles of State Policy have designed with an earnest zeal to strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social economical and political shall inform all the institutions of national life. Naturally, an effective implementation of this principle result, in promoting the welfare of the people through social,

¹². Sunil Deshta, Law and Menace of Child Labour, 108-109(2000).

¹³. Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746

¹⁴. Sheela Barse v. Union of India, AIR 1986 SC 1773.

¹⁵. Ins by the Constitution (Eighty –Six Amendment) Act, 2002, Section 2.

¹⁶. Sudesh Kumar Sharma, "Child and the Constitution: An Appraisal in Distributive Justice Perspective" 2 Supreme Court Journal 12(1986).

¹⁷. People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

¹⁸. P.L. Mehta, Child Labour and the Law: Myth and Reality of Welfare Measure 23 (1996).

economic and justice and in this turn is expected to promote proportionately, the child welfare also.¹⁹

Article 39 (e) and (f) direct the state to evolve a policy eliminating the abuse of tender age and to free children from the circumstances forcing them to enter into avocations unsuited to their age or strength. The state is also directed to create social and economical conditions and to provide facilities and climate for exercise of freedoms and maintenance of dignity. The state is further directed to protect the children against exploitation and material abandonment.²⁰

The provisions of Article 41 requires that the state shall be within the limits of its economic capacity and development make effective provision for securing the right to work to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cause of deserved want. It covers the children as the suffering children deserved the least fate as in no case they can be held responsible for their past sins. Hence it is the duty of state to provide social assistance to all the children who suffer for want of basic necessities of life. The implementation of this provision is also expected to promote the welfare of the children proportionately and to ensure distributive justice to them.²¹

Article 42, requires the state to make provisions for securing just and humane conditions of work and for maternity relief. The measures for maternity relief are meant for expectant mothers and mothers during the period of pregnancy and after the child birth. These measures meant for providing proper health and care and other facilities to the mother before and after the child birth are expected to promote the health of children and to provide healthy environments for their bringing up.²²

Article 45 requires the state to provide early childhood care, and education for all children until they complete the age of six years.²³

Article 46 provides that the state shall promote with special care, the educational and economic interests of the weaker section of the people, and in particular, of scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation. The implementation of this principle while promoting the economic and educational interests of the weaker sections of the people particularly those of scheduled caste and scheduled tribes will indirectly promote the welfare of the children of these sections of the society, need the welfare measures most because of the appealing poverty and backwardness of their parents.²⁴

Article 47 imposes a primary duty upon the state to raise the level of nutrition and the standard of living of its people and improvement of public health. Thus, it is the responsibility of the state to provide nutritious food to the children as the word "people" includes not adults but children as well as parents this provision becomes more relevant in case of children as the malnutrition can cause irreparable danger to the personality of the children though mental retardation and blindness.²⁵

Though these directives are not enforceable by the Court, yet these have been declared to be fundamental in the governance of the country. It is the obligation of the state to apply these principles in making laws. If the government ignores them it will certainly have to answer for them before the electorate at the time of the election. Thus, it will not be correct to say that there is no sanction of enforceability behind these directives. In our democratic set up, vigilant public opinion is the real force behind the political institution which stands for the benefit of individual.

4. Legislative Regime on Child Labour

In India, various enactments have been codified before and after the commencement of the Constitution of India prohibiting Child Labour keeping in view the constitutional mandates, safety and welfare of children. It would be desirable to mention these acts to exemplify the point.

1. The Children (Pledging of Children) Act, 1933

The main object of this Act is to eradicate the evils arising from the pledging of a labour of young children by their parents to employers in lieu of loans for advances.

Previously, the Act extended to whole of India except Jammu & Kashmir, but after September 1, 1971, it has also been extended to Jammu & Kashmir.²⁶ The Act declares an agreement, oral or written to pledge the labour of a children, whereby the parents, or the guardian of a child, in return or any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilized in any employment to be void.²⁷ However an agreement made without detriment in a child and not made in consideration of any benefit other than reasonable wages to be paid for the child's services and terminable at more than a week's notice is not to be deemed an illegal agreement. A person who knowingly enters into an agreement with a parent or guardian of a child whereby such parent or guardian pledges the labour of child, or an employer who knowingly employs such a child is liable to a fine up to Rs. 200. A parent or guardian who knowingly pledges the labour of his child is liable to be punished with a fine which may extend to up to Rs50.²⁸ Under the present Act 'Child' means a person who has not completed the age of 15 years.²⁹

This Act was passed with an intention to protect child from exploitation in various hazardous occupations but it remained a dead letter. No Judicial efforts were made to protect the child from exploitation.

2. The Employment of Children Act, 1938

This Act is also applied to the whole of India. To prevent employment of children in hazardous employment and certain categories of unhealthy occupations, the Act prohibits the employment of unhealthy children below 15 years of age in any occupation connected with the transport of passengers, goods or mail by railway, or a port authority within the limits of a port.³⁰

With the exception of children employed as apprentices or trainees, no child between the ages of 15-17 years can be employed or permitted to work in those occupations unless he

¹⁹. Art 38.

²⁰. Art 39(e) and (f).

²¹. Art 41.

²². Art42.

²³. Ins by the Constitution (Eighty –Six Amendment) Act, 2002, Section 2.

²⁴. Art 46.

²⁵. Art 47.

²⁶. See, The Children of (Pledging of Labour) Act, 1933, s. 1(2).

²⁷. Section.3.

²⁸. Section 4.

²⁹. Section 2.

³⁰. See, The Employment Children Act, 1938, s. 3(3).

is allowed a rest interval of at least 12 consecutive hours in a day. The period of rest is to include at least 7 such consecutive hours between 10p.m. and 7a.m. and may be prescribed by the appropriate government.

The Act also prohibits the employment of children below the age of 14 years in workshops connected with bidi-making, carpet-weaving, cement manufacturing including bagging of cement, cloth printing, dyeing and weaving, manufacturing of matches, explosives and fireworks, mica-cutting and splitting, shellac manufacture, soap manufacture, tanning and wool cleaning.³¹ The exception has been made in such workshop wherein any process is carried out by the occupier with the aid of his family only and without employing hired labour or any school established by, or receiving assistance or recognition from the State Government. The children employed permitted to work in occupations connected with the transport of good, passengers etc by other modes of transport are not governed by the Act. The Railway Administration and Port Authorities have to maintain registers showing the name and date of birth of every child less than 17 years of age employed by them.³² The employer is punishable with simple imprisonment up to one month or fine up to Rs500 or both.³³

3. The Factories Act, 1948

The Act prohibits the employment of a child below 14 years in any factory. To safeguard the health of young person above the age of 14 years and below 18 years, and for their safety, the act places a few other restrictions on their safety, the act enjoins upon the employer to obtain a certificate of fitness from a certifying surgeon. The act further makes provision for crèches to be provided by the employer in factories employing 50 or more women workers for the use of the children of 6 years of age.³⁴

4. Motor Transport Workers Act, 1951

The Act is applicable to every transport undertaking employing five or more workers and the State Government has been given power to apply the provisions of the Act even to transport undertaking employing children. A child is defined as a person who has not completed 15 years of age. An adolescent is allowed to work provided he has a certificate of fitness granted by a certifying surgeon.³⁵

5. Plantation Labour Act, 1951

The Act applies to plantation in tea, coffee, rubber or cinchona which measures 10.117 hectares or more and in which thirty or more persons are employed. The act prohibits the employment of those children in plantations who have not completed the age of 12 years, and every child above 12 years is required to obtain a certificate of fitness from a certifying surgeon. A child cannot be employed at night between 6 p.m. and 7p.m. The maximum working hours for child and adolescent are forty in a week. The Act also makes the provisions for education of children employed in plantations between the age groups of 6-12 if the workers employed in any plantation exceed twenty five numbers. The State Government may make rules requiring

the employers to provide educational facilities in such standard as may be prescribed.³⁶

6. The Mines Act, 1952

The Mines Act was enacted in the year 1952. According to this Act, "No person who has not completed the age of 16 years can be employed in any mine". A child cannot be present in any part of mine which is below ground and also above ground after such date as the Central Government may fix by notification. A young person who is between 16 years of age is allowed to work in part below ground, if he has a medical certificate from a certifying surgeon. Even then such person cannot be allowed to work at night i.e. between 6 p.m. and 6a.m. or between 10 to 5a.m. in case Central Government so notifies.³⁷

7. The Merchant Shipping Act, 1958

The Act prohibits the employment of children in any capacity who are below 15 years of age or sea going ships excepts (a) in a school ship or training ship or (b) in a ship in which all persons employed are members of one family or (c) in a homemade ship of less than two hundred tone gross and (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

8. The Apprentice Act, 1961.

The apprentices Act, 1961 regulates the training of apprentices in industry so that the programme may be organized on a systematic basis and the apprentices may get the maximum advantage of their training. The Act provides that a person who is less than 14 years of age will not be qualified for apprenticeship training. In other words only children between the age over 14 year and below 18 years are commendable and will go along way taking a sound training which would be an asset not only to the apprentices but also for the nation.

9. Beedi and Cigar Workers (Conditions of Employment) Act, 1966

This Act also extends to the whole of India. This is a special act to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected therewith. It provides that no child should be required or allowed to work in any industrial premises. Under the Act, a 'Child' means a person who has not completed his fourteen years of age. The Act also prohibits the employment of young person of 14 to 18 years between 7 p.m. and 6 a.m. The Act also defines the expression 'employee', so as to include any labour that is given raw material by an employee or a contractor for being made into beedi or cigar or both at home. A person who is not employed by an employer or a contractor, but who is working with the permission of or under an agreement with, the employer or a contractor, also falls within its definition.

In *M/s Patel Sons v Union of India*³⁸ the Supreme Court observed that the terms of the definition of 'employee' are wide. They include not only persons employed directly by the

³¹. Section 3(3).

³². Section 3(E).

³³. Section 4.

³⁴. For more detail see, the Factories Act, 1948.

³⁵. For more detail study see Motor Transport Workers Act 1951.

³⁶. The age of twelve years has however, been omitted by S.24 of the Children Labour (Prohibition and Regulation) Act, 1986.

³⁷. See Mines Act, 1952.

³⁸. AIR 1987 SC 447.

employer but also persons, employed through a contractor. Moreover; they include not only persons employed in connections with the work of the factory. Accordingly, a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory engaged in the tasks of rolling beedis. Therefore, the home worker rolling beedis is an employee under the Act.

The administration of the Beedis and Cigar Workers (Conditions of Employment) Act, 1966 rests with the State Governments, who appoint Chief inspector or inspectors for the purpose. The Act provides for contravention which may be imprisonment up to three month or a fine up to Rs 500/- or both.

10. Contract Labour (Regulation and Abolition) Act, 1970

The Act extends to the whole of India.³⁹ The act applies to establishments and contractor employing 20 or more workers.⁴⁰ It is not applied to establishment in which works only of an intermittent or casual nature is performed. They are not specific provisions under the Act pertaining to employment of children.

11. The State Shops and Commercial Establishments Acts

The different States have enacted their own statutes for regulating conditions of workers in shops and establishments. The Acts apply to shops, commercial establishments, restaurants and hotels and place of amusement and notified areas, to which the Factories Act does not apply. Further the State governments are empowered to extend the coverage of the Act in any establishment.

The minimum age of employment in shops and commercial establishment in 12 years⁴¹ in Bihar, Orissa, Jammu and Kashmir, Madhya Pradesh, Karnataka, Rajasthan, Tripura and Manipur, and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There is no separate Shops and Commercial Establishment Act in Andaman and Nicobar, Arunachal Pradesh, Nagaland and Sikkim. When there is conflict between the provisions of the States to the extent of repugnancy. Then the Central Act i.e. Child Labour (Prohibition and Regulation) Act, 1986 will look after repugnancy of the States Acts.

12. Radiation protection rules, 1971

No person means child under the age of eighteen years shall be employed as a radiation worker.

13. The Child Labour (Prohibition and Regulation) Act, 1986

(a) Salient features of the Act

The child Labour (prohibition and Regulation) Act, 1986 is made for obtaining uniformity in the definition of 'child' in various laws relating to child labour because the term 'child' is defined in different Acts in different ways. The Act defines the term 'child' under section 2(ii) as a person who has not completed 14 years of age. It also classifies occupations into 'hazardous' and 'non-hazardous' in nature. It also states⁴² that

no child under 14 years of age should work in any of the occupations listed in the part A of the Schedule or in any case workshop where any of the processes set forth in part B of the Schedule is carried on.

Part III of the Act regulates child labour in those establishments where none of the occupations or processes listed in the Schedule are carried on. However, it stipulates conditions such as wage structure, working hours, etc for employment of children in such non-hazardous occupations. Section 7 of the Act specifies the period of work for a child in any establishment on each day is fixed so as to exceed 6 hours. This include interval and the time spent in waitings for work on each day. Section 7(4) prohibits night work between 7 p.m. and 8a.m. and section 7(5) prohibits double employment of a child in any establishment.

The Act also provides for inspection by inspectors appointed by the state government to look into effective implementation of the Act and on contravention of any of the provisions of the Act or rules made there under, it provides with the penalty of simple imprisonment of one month or fine which may extend to Rs 10000 or both under Section 14. For contravention of the provision of Section 3 by the violators will face the punishment of minimum three months imprisonment up to one years as well as fine range between Rs 10000 to 20000 o with both and for repeated offence the imprisonment will exceed to minimum six months and maximum two years.⁴³

(b) Weaknesses of the Act

Section 13 of the Act empowers the appropriate government to make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments without specifying any period within which such rules shall be required to be made. Furthermore, The Act does not mention anything about welfare provisions. It would have added a single line, providing that welfare provisions as contained in the Factories Act shall be applied, so long such rules are made.

The Act does not protect children working in the unorganized sector. The Ministry of Labour did not find it necessary to include the glass industry among the list of occupations hazardous to children even though there is an enough evidence to prove that the glass works are very dangerous for children. The slate and pencil industry where children succumb to respiratory ailments working under unhealthy conditions was excluded from the purview of the Act. Similarly, lock industry was not included.

The act provides for maintenance of a register with all the details of the child workers employed in any establishment.⁴⁴ But in reality no unit has maintained records or such registers of employment in connection with salary paid or terms and conditions of employment, in order to prove their existence during inspection. It is difficult for the prosecution to prove that really child is working as child labourer or not due to deficiency of maintaining register of the records by the employer.

14. Child Labour (Prohibition and Regulation) Amendment Act 2016

(a) Salient Features of the Act

³⁹. Section 1(2).

⁴⁰. Ibid, Section 1(4) (a).

⁴¹. Supra note 36.

⁴². Section 3.

⁴³. Section 14(1)(2).

⁴⁴. Section 11.

- The earlier Child Labour (Prohibition and Regulation) Act, 1986 failed to keep the child labour in check and creates the problem for the Child over all development, Parents, NGO, and Society.
- To make it compatible with RTE Act, 2009 and Article 21A of the Indian Constitution, 1950.
- To recognize adolescent labour as per ILO norms.
- **Definition of Adolescent added**– “Adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year;⁴⁵
- **Definition of Child substituted**– “Child” means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.⁴⁶
- **Substitution for Section 3: Prohibition of employment of children in any occupation and process with exceptions.**
 - No child shall be employed or permitted to work in any occupation or process.⁴⁷
 - Nothing in sub-section (1) shall apply where the child,—
 - a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
 - b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed;
 - Provided that no such work under this clause shall effect the school education of the child.
 - Explanation.—For the purposes of this section, the expression,
 - a. “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
 - b. “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
 - c. “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section(2).”

Insertion of Section 3A: Prohibition of employment of adolescents in certain hazardous occupations and processes

- No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule:
- Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.

⁴⁵. Section 2 (i) inserted before Clause (ia) after renumbering the previous Clause (i) as (ia)

⁴⁶. Section 2(ii) as substituted by the Amendment

⁴⁷. Section 3(1).

Amendment of Section 14: Penalties

Table 1: The Penalties as mentioned in the Child Act, 1986 has now been amended as

| Offence | Penalty |
|--|--|
| Contravention of Section 3 | Imprisonment for term of six months (minimum) Imprisonment for term of two years (maximum) or Fine of Rs20000-50000 or Both |
| Proviso Parents/Guardians | No punishment (unless they permit such child for commercial purposes in contravention of the provisions of section 3). |
| Subsequent contravention of Section 3 after previous conviction under Section 3 | Imprisonment for a term one year(minimum) to three years (maximum) |
| Contravention of Section 3A | Imprisonment for term of six months (minimum) Imprisonment for term of two years (maximum) or Fine of Rs20000-50000 or Both |
| Proviso Parents/Guardians | No punishment (unless they permit such adolescent to work in contravention of the provisions of section 3A). |
| Subsequent contravention of Section 3 A after previous conviction under Section 3 A | Imprisonment for a term one year(minimum) to three years (maximum) |
| Contravention of Section 3 or 3 A by Parents / Guardians (First Offence) | Not punishable in First Offence |
| Subsequent contravention of Section 3 or 3 A by parents / guardians after previous conviction under Section 3 or 3 A | Fine upto Rs 10000 |

Insertion of New Sections 14 A, 14 B, 14C and 14 D

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed by an employer and punishable under section 3 or section 3A shall be cognizable.
- The appropriate Government shall constitute a Fund in every district or for two or more districts to be called the Child and Adolescent Labour Rehabilitation Fund to which the amount of the fine realized from the employer of the child and adolescent, within the jurisdiction of such district or districts shall be credited.
- The appropriate Government shall credit an amount of fifteen thousand rupees to the Fund for each child or adolescent for whom the fine amount has been credited under sub-section (1).
- The child or adolescent, who is employed in contravention of the provisions of this Act and rescued, shall be rehabilitated in accordance with the laws for the time being in force.
- The District Magistrate has been given the power to compound any offence committed for the first time under Section 14 (3) or any offence committed by a parent or a guardian.

Insertion of Section 17A and Section 17 B:

- “17A. The appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.
- 17B. The appropriate Government shall make or cause to be made periodic inspection of the places at which the employment of children is prohibited and hazardous occupations or processes are carried out at such intervals as it thinks fit, and monitor the issues, relating to the provisions of this Act.”

Amendment to the Schedule

Under the Schedule, to be read with Section 3 A, the following changes have been made-

- Mines
- Inflammable substances or explosives.
- Hazardous process.
- Explanation – For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

(b) Weakness of the Act

If we read out the amendment act it seems to be new changes for the future child rights. However on reading careful, some shortcomings are exposed from the new act. The shortcomings of the Act are as follows:

Reduced the list of Hazardous Occupation encourages the Child Labour Problem - Slashing the list of hazardous occupation from 83 to just (mining, explosives, and occupations) would only reduce the child labourers in number, not in reality and it accelerate the problem. The law at large unfair to those adolescent those who are employed in rest 80 hazardous occupations. Section 4 of the Act gives discretionary power to government authorities, not to parliament to revise the list. Therefore the problem of child labour will increased not decreased.

Legalizing Child Labour in “Family Enterprise” which results in to Forced Labour – Section 3 (2) (a) and (b) permits a child to work in family or family enterprise and in an audio-visual entertainment industry. The said provision is detrimental to the interest of the child as it does not defined the hours of work. It simply provides that only after school hours and during vacation child can work. Such legal provision is likely to be misused in the Indian context and create a path for child labour as most children indeed work in a family-run trade. The term family members are defined as any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons. Such broader definition would definitely promote the caste-based occupation. It will also give the powers to contractors to use child as worker in their enterprise and promote the path of bonded/forced labour. Such provision will have an adverse

impact on education, innovative minds, learning outcomes as well as health and overall development of a child.

The Act has completely overlooked the vital distinction between Children and Adults

Non – recognition of this distinction is arbitrary and a clear violation of a right to equality embodied under Article 14 of the Constitution. Further, the definition of child labour has been altered by the Act to legitimize the child labour to help in their family business and it permits adolescent to work in the non- hazardous occupation.

The Act contravene domestic legislations as well as international convention

The Act not only reverse the gains of previous laws, but also goes against the spirit of RTE Act of 2009 as it allows a child to work in a family enterprise. It also transgresses international convention such as the International Labour Organization’s (ILO), and UNO Convention on the Rights of the Child, to which India is a signatory. UNICEF has raised alarm over children employment in family enterprises and reduction in the list of hazardous occupation.

The Act lacks the provisions relating to Regulation, Inspection and Monitoring Systems.

Regulation is going to be a big challenge as the Act does not lay down the criteria to determine whether a particular enterprise is a family enterprise or not. The lack of such provisions leaves the life of children at the hands of the employer who forces the children to work in a deteriorated condition which affects their mind and health part.

Penalty provisions also suffer from certain loopholes – The Act prescribe penalty only for employment of children and not for bad working conditions.

Conclusion/Suggestion

The brief discussion of the constitutional mandate, different enactments dealing with child labour reveals that only a few statutes relating to children were enacted during the pre independence era. Since independence, the state has become fully conscious of its welfare functions and of its responsibilities towards children and consequently codified a number of enactments in consonance with the directive principles of the state policy as enshrined in the Constitution of India and ILO conventions and recommendations and adopted various measures for the betterment and welfare of children, nevertheless the child labour is increasing day by day indicating ambiguities, lacunas, and deficiencies in the present legislative measures. The following points are there for submission

1. The implementation of child labour laws in our country is very ineffective. The main reason for this are:
 - a. In almost all labour enactments inspecting staff appointed under particular enactment has been made responsible to ensure observance of the provisions of the Act concerned. The inspectors do not sincerely perform their statutory duty of inspection. Sometimes, they act in very irresponsible manner on account of extraneous considerations and sometimes they being in low number feel unable to cover all factories or organizations within their jurisdictions.

- b. The parents on account of ignorance and poverty obtain false age and medical certificates to get their children engaged in work. Duty had been rely on certified surgeon if they performed their work sincerely and refuse to give their false certificates with a view to save children from exploitation
2. The penalties under the legislation dealing with the prohibition and regulation of child labour are outdated and inadequate to punish the culprit except Factories Act. For example an industrialist, occupier, employers or the management of the company to pay a fine of Rs 20000 or 50000 is nothing. Due to liberal tendency of the penal provisions the employers are in a position to exploited the child workers and force them to work in unhygienic conditions.
3. In almost legislation, the coverage of the Act is limited by exemption clauses or the government is authorized to exempt some organizations or units from the operation of the law. The Act concerned operates only when employers or workers in prescribed number are working in such industries subject to that Act.
4. The legislation regulating child labour does not cover unorganized sectors like agriculture, glass industry, family undertakings and urban informal sectors.
5. Lack of educational institutions within easy reach of children as well as education is so costly that it has become beyond the reach of common poor masses.
6. There is lack of unity among the child labourers in the industry and they have a little hand to fight the system for their violation of rights.
7. Explosion of population is also root cause for the supply of child labour.
8. There is a general sympathy amongst people towards any one employed. It is argued that if the child was not employed he would really on the streets and thus become a more dangerous hazard for the community at large. He would have been vagabond. In such a situations employer, parents and inspecting staff all involve in a vicious circle to evade legal rules.
9. Most of the industrialist thinks that there is no reason to worry about the Government machinery and the rules imposed by the Government on the industry due to they can bribe the labour officers who visit the work place when they got the notices for flouting the rule prescribed by the legal enactments. Due to the nexus of political parties, employers and the labour officer the industrialist will fee from the mechanism of penal provisions.

Suggestions

1. The parents and guardians for the loss they may suffer on account of withdrawal of their children from work should be get proper compensation.
2. Attractive and well equipped educational institutions to provide latest curriculum to the children released from child labour and they should be in their reach.
3. Maximum possible information regarding law on child labour would serve as a deterrent check.
4. Poverty is the main root cause of child labour, therefore eradication of poverty is the best solution to the problem of child labour. Poverty can be minimized by providing better employment opportunities to the poor and by

- implementing the agrarian reforms and implementation of minimum wages legislation effectively.
5. There should be no political pressure in cases the industrialists are found violating law regarding child labour.
6. The population explosion must be reduced for ensure job opportunities to adult workers by adapting family planning. It will minimize child labour problems.
7. Educative programmes should be arranged in different places to generate awareness among the parents that they are playing with the lives of their children by obtaining false certificates of fitness or the age to employ them in industrial establishments under exploiting and inhuman conditions.
8. The punishments provided in the existing statutes except Factories Act, as penalty for violation of provisions of the Acts are very meager and low and therefore have no deterrent effect. Thus penalty provided in the existing laws should be enhanced for create deterrent effect in the minds of violators.
9. Vocational training should be arranged for children to train them to do some productive work and brought the child to the normal life which he/she faces the wrath of the employers in their working conditions.
10. There is an urgent need of greater involvement of the society at large as well. It can be possible if the work of the enforcement machinery is duly tied up with the voluntary organizations and trade unions.

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